

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED HEALTH GROUP, INC.,	:	CIVIL ACTION
Plaintiff	:	11-620
	:	
v.	:	
	:	
GLAXOSMITHKLINE, LLC,	:	
Defendant	:	
	:	

ORDER

AND NOW, this 18th day of April, 2011, upon review of Plaintiff's Motion to Remand [Doc. No. 3], Defendant's reply [Doc. No. 4], and Plaintiff's reply [Doc. No. 8], in light of the Court of Appeals for the Third Circuit holding that a writ of summons is not an "initial pleading" subject to removal under 28 U.S.C. §1446(b),¹ and noting that Plaintiff only filed a writ of summons and pre-complaint interrogatories in the Philadelphia County Court of Common Pleas, the Court finds that Defendant's removal of this case was premature.² Accordingly, Plaintiff's Motion to Remand is **GRANTED** and this civil action is hereby **REMANDED** to the Philadelphia County Court of Common Pleas.³

¹ Sikirica v. Nationwide Ins. Co., 416 F.3d 214 (3d Cir. 2005)

² Defendant argues that where federal jurisdiction is clear, removal cannot be premature, and that Sikirica and §1446 set *deadlines* for removal but do not address when the right to removal *accrues*. However, federal district courts in Pennsylvania which have considered the issue of premature removal have held, relying upon Sikirica, that the right to removal is not triggered until a complaint is filed. See, Lane v. CBS Broadcasting, Inc., 2008 WL 910000 (E.D.Pa. April 2, 2008); Mulrine v. Air Contact Transport, Inc., 2006 U.S. Dist. LEXIS 64652 (E.D. Pa. September 11, 2006); Gardner v. State Farm Fire & Casualty Co., 2007 U.S. Dist. LEXIS 53540 (W.D. Pa. July 24, 2007).

³ If appropriate, Defendant may re-file its notice of removal within thirty days of service of the complaint in the state court action.

The Clerk of Court is **DIRECTED** to mark this case **CLOSED** for statistic purposes.

IT IS SO ORDERED.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.